

(b)(3)

(b)(6)

F-07-01622

**TELECOPIER TRANSMITTAL SHEET**

TO: Mr. Scott A. Koch  
Information and Privacy Coordinator  
Central Intelligence Agency  
Washington, D.C. 20505  
(703) 613-1287  
(703) 613-3007 fax

APPROVED FOR  
RELEASE ☐ DATE:  
18-Aug-2010

FROM: Mark S. Zaid, Esq.  
The James Madison Project  
1250 Connecticut Avenue, N.W.  
Suite 200  
Washington, D.C. 20036  
(202) 498-0011  
(202) 330-5610 fax

2007 JUL 10 PM 12:17

SUBJECT: Official Secrets Legislation FOIA Request

DATE: July 10, 2007

NUMBER OF PAGES TRANSMITTED (INCLUDING COVER SHEET): 9

MESSAGE/CONTENTS:

PLEASE SEE ATTACHED.

**CONFIDENTIALITY NOTICE**

This fax/telecopy is intended only for the use of the individual to which it is addressed and may contain information that is privileged or confidential. If you have received this communication in error, please notify us immediately by telephone.

4 of 12 DOCUMENTS

Copyright 2000 The Washington Post

# The Washington Post

## washingtonpost.com

The Washington Post

October 13, 2000, Friday, Final Edition

**SECTION:** A SECTION; Pg. A05**LENGTH:** 236 words**HEADLINE:** Congress Passes Bill to Punish Leaks**BODY:**

Congress voted yesterday to expand government authority to bring criminal charges against those disclosing classified material. Critics warned of a chilling effect on the free flow of information.

Rep. Nancy Pelosi (D-Calif.) said it is the nation's first ever official secrets act and that even members of Congress would be subject to criminal charges for leaking classified information.

"Congress is foolish," said Pelosi, a member of the House intelligence committee, "to give a blank check to the executive branch for prosecutions in this important area."

But Rep. Porter J. Goss (R-Fla.), chairman of the committee, said leaking by government officials is "not a right or a privilege." He said the provision was "narrowly crafted to protect the rights that all Americans hold dear" and that the Justice Department had confirmed that it posed no constitutional problem.

The leaks provision was part of an intelligence authorization bill that the House passed by voice vote and sent to the White House for the president's expected signature. The Senate approved it earlier yesterday by voice vote.

Current law makes it a felony to leak classified defense information that results in harm to national security.

The new measure would make almost all unauthorized and willful disclosures of classified information by government employees a felony punishable by up to three years in prison.

**LOAD-DATE:** October 13, 2000

3 of 12 DOCUMENTS

Copyright 2000 The Washington Post

# The Washington Post

## washingtonpost.com

The Washington Post

October 24, 2000, Tuesday, Final Edition

**SECTION:** A SECTION; Pg. A02**LENGTH:** 1581 words**HEADLINE:** Anti-Leak Bill Alarms Media, Divides GOP**BYLINE:** Vernon Loeb , Washington Post Staff Writer**BODY:**

Media organizations and civil libertarians are alarmed by new legislation criminalizing leaks of all "properly classified" government information, predicting that it will have a chilling effect on free speech and public debate.

Designed to stop what intelligence officials have decried as a torrent of damaging leaks to the media, the anti-leak provision was passed by Congress this month without public hearings as part of a larger intelligence bill and is now on its way to the White House, where Attorney General Janet Reno and other senior administration officials have signaled their support.

The measure, drafted by Sen. Richard C. Shelby (R-Ala.), chairman of the Senate Select Committee on Intelligence, represents the first time Congress has put the full weight of criminal law behind the government's classification system, making the willful, unauthorized disclosure of classified material by government personnel a felony punishable by up to three years in prison.

"This legislation contains a provision that will create--make no mistake about it, with not one day of hearings, without one moment of public debate, without one witness--an official secrets act," Rep. Robert L. Barr Jr. (R-Ga.), a former CIA official and U.S. attorney, said during House debate. "It has been broached many times. . . . But our regard for constitutional civil liberties . . . has in every case in which an effort has been made to enact an official secrets act beaten back those efforts."

Current espionage statutes criminalize the unauthorized disclosure of "national defense" information by those with intent to aid a foreign power or harm the United States. Other criminal laws prohibit the unauthorized release of certain categories of highly sensitive information, including the names of covert U.S. intelligence operatives and intelligence derived from communications intercepts.

But Congress previously had resisted attempts to broaden those criminal prohibitions to cover all classified information out of concern about First Amendment protections and what civil liberties groups and others describe as

Anti-Leak Bill Alarms Media, Divides GOP The Washington Post October 24, 2000, Tuesday, Final Edition Page 2

rampant over-classification by a government security apparatus that now classifies documents at the rate of 8 million a year.

What is particularly striking about the new anti-leak provision is that it has divided leading Republicans in the House, where it was championed by Rep. Porter J. Goss (R-Fla.), chairman of the Permanent Select Committee on Intelligence, and opposed by Rep. Henry J. Hyde (R-Ill.), chairman of the Judiciary Committee.

"Leaking classified government information is not a right or a privilege of U.S. officials or employees who have access to that information," Goss, a former CIA case officer, said in floor debate. "Too often over the past few years, we have significantly risked, and sometimes lost, fragile intelligence resources because those employed by the government ... have chosen to leak that information."

Goss also noted that the anti-leak provision was written to conform with language suggested by Reno and Justice Department lawyers, who recommended that criminal sanctions apply to the unauthorized disclosure of "properly" classified information so that in any criminal case, the government would have to prove not only that the information was stamped classified but also that its release actually injured the nation.

Hyde and Rep. John Conyers Jr. (D-Mich.), the Judiciary Committee's ranking Democrat, did not buy the argument. In a letter they sent to Goss shortly before the fiscal 2001 Intelligence Authorization Act was considered in conference committee and passed by both houses, they argued that extending criminal sanctions to leaks of all "properly classified information" was a matter that required hearings by their committee.

"It has profound First Amendment implications, and goes to the very heart of the ability of the public to remain informed about matters of critical public interest, which often relate to governmental misdeeds," they wrote. "Moreover, since the Executive Branch asserts unilateral authority to define what information should be classified, this extension would grant the administration a blank check to criminalize any leaking they do not like."

As drafted, the anti-leak provision does not attempt to sanction reporters and others who publish or broadcast classified information, only those in the government who leak such information without authorization, Shelby and other proponents note.

"I can assure this body that in passing [the anti-leak provision], no member of the Select Committee on Intelligence intended that it be used as an excuse for investigating the press," Shelby said in Senate debate.

A memorandum by Shelby's staff says that the Justice Department "rarely seeks to interview or subpoena journalists when investigating leaks." The memo also states that there has never been a prosecution of a journalist under existing laws--even the statute covering unauthorized disclosure of the identities of intelligence operatives, which criminalizes the release, and the receipt, of such information.

But media organizations and civil liberties groups say all that could change with a new attorney general, particularly when a broad anti-leak provision is on the books. Prosecuting leakers, said Lucy Dalglish, executive director of the Reporters Committee for Freedom of the Press, will inevitably lead prosecutors to subpoena journalists to identify their sources, which journalists will inevitably refuse to do.

"I could therefore see more journalists going to jail for contempt of court than I see leakers going to jail for leaking the information to begin with," Dalglish said.

In a letter to Congress in July, the Reporters Committee and eight other media organizations, including the American Society of Newspaper Editors and the National Newspaper Association, said the anti-leak provision would lead not only to more media subpoenas but also to "the over-classification of information and a draconian interpretation of existing classification regulations."

Anti-Leak Bill Alarms Media, Divides GOP The Washington Post October 24, 2000, Tuesday, Final Edition Page 3

Those groups and other opponents, however, have all but abandoned hope of a presidential veto and are pushing for hearings by the House Judiciary Committee on legislation to repeal the anti-leak provision early next year.

"Currently, if an individual discloses certain categories of important national security information, he can and should be prosecuted," Barr said in the floor debate. "This provision, though, would silence whistleblowers in a way that has never before come before this body and which has never before been enacted."

**LOAD-DATE:** October 24, 2000

1 of 12 DOCUMENTS

Copyright 2000 The Washington Post

# The Washington Post

## washingtonpost.com

The Washington Post

November 2, 2000, Thursday, Final Edition

**SECTION:** A SECTION; Pg. A02**LENGTH:** 642 words**HEADLINE:** Veto of Anti-Leak Bill Urged; Sen. Schumer, 4 Media Leaders Ask Clinton to Reject Measure**BYLINE:** Walter Pincus; Vernon Loeb, Washington Post Staff Writers**BODY:**

Senior administration officials are divided over whether President Clinton should sign a bill criminalizing leaks of classified government information. As they prepared for a White House meeting today to hash out the issues, aides predicted that Clinton could receive a split recommendation.

After intense lobbying this week by media organizations and civil liberties groups, one administration official said, there is "growing concern" that the anti-leak provision is too broad and could have a chilling effect on public debate.

"We're reviewing the bill," White House press secretary Jake Siewert said. "We have certainly heard from a number of news organizations about their concerns about the bill--and we're taking these seriously."

At a news conference yesterday, Sen. Charles E. Schumer (D-N.Y.) called on Clinton to veto the fiscal 2001 Intelligence Authorization Act, which contains the anti-leak language, so that Congress can "either fix or remove this potentially devastating provision."

Rep. Porter J. Goss (R-Fla.), chairman of the House Permanent Select Committee on Intelligence, said he too has concerns about the breadth of the anti-leak provision.

But he urged Clinton to sign the intelligence authorization bill with the understanding that early next year Congress would clarify the anti-leak provision to cover only "sensitive compartmented information," the government's most highly classified material.

The anti-leak measure, drafted by the Senate Select Committee on Intelligence, represents the first time Congress has put the full weight of criminal law behind the government's classification system, making the willful, unauthorized disclosure of classified material by government personnel a felony punishable by up to three years in prison.

On Monday, the heads of four media organizations--Tom Johnson, chairman of CNN; Boisfeuillet Jones Jr., publisher of The Washington Post; John Sturm, president of the Newspaper Association of America; and Arthur M.

Page 2

Veto of Anti-Leak Bill Urged; Sen. Schumer, 4 Media Leaders Ask Clinton to Reject Measure The Washington Post  
November 2, 2000, Thursday, Final Edition

Sulzberger, publisher of the New York Times--sent a letter to the president urging him to veto the bill.

"For the first time in our nation's history, a law would criminalize all unauthorized disclosures of classified information--in effect creating an 'official secrets act' of the sort that exists elsewhere but has always been rejected in this country," they wrote.

"This provision shatters the delicate balance that has been achieved in this country between the public's right to know and the legitimate demands of national security."

On Capitol Hill, lawmakers and aides reacted with surprise to what they described as a White House reversal on the anti-leak provision. Members and staff of the Senate intelligence committee said they had been assured "up and down the chain" of administration officials that "the president would not veto this bill if we made the changes they wanted."

With CIA Director George J. Tenet complaining that a torrent of leaks was compromising intelligence activities, the Senate and House intelligence panels held closed hearings this year to consider a legislative remedy. Current law criminalizes the unauthorized disclosure of "national defense" information, the identities of covert intelligence operatives and certain forms of signals intelligence, but not other forms of classified information.

The Senate committee added the anti-leak provision to the intelligence authorization bill after making some changes requested by the Justice Department. But according to one administration official, White House Chief of Staff John D. Podesta is trying to figure out why the language was not drawn more narrowly.

Podesta, who has taken a personal interest in the issue, is at a loss to understand "how this thing could supposedly be fixed and still be as broad as it is," the official said.

**LOAD-DATE:** November 02, 2000

**The James Madison Project**  
**1250 Connecticut Avenue, N.W.**  
**Suite 200**  
**Washington, D.C. 20036**

(202) 498-0011  
(202) 330-5610 fax

E-Mail: [JaMadPro@aol.com](mailto:JaMadPro@aol.com)  
<http://www.jamesmadisonproject.org>

10 July 2007

VIA FACSIMILE

Scott A. Koch  
Central Intelligence Agency  
Information and Privacy Coordinator  
Washington, D.C. 20505

Re: FOIA Request – Official Secrets Act legislation

Dear Mr. Koch:

This is a request on behalf of The James Madison Project ("JMP") under the Freedom of Information Act, 5 U.S.C. § 552, et seq., for copies of all internal Central Intelligence Agency ("CIA") documents pertaining to discussions concerning the proposed enactment of an anti-leak provision in the 2001 Intelligence Authorization Act and any subsequent related discussions on the topic. The provision, known informally as the Official Secrets Act, would have criminalized unauthorized disclosure of properly classified information. Enclosed please find copies of articles from *The Washington Post* detailing the debate over the provision and, more importantly, CIA Director George J. Tenet's complaints regarding leaks of classified information and their effect on intelligence activities.

Should a document have originated with a third-party agency and require referral, please notify us of the referral and identify the agency in question. If you deny all or part of this request, please cite the specific exemptions you believe justifies your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. In excising material, please "black out" rather than "white out" or "cut out".

---

*"Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives."*

*James Madison, 1822*



---

**The James Madison Project**

---

Additionally, we are hereby requesting a waiver of all fees. JMP is a non-profit organization under the laws of the District of Columbia and has the ability to disseminate information on a wide scale. Stories concerning our activities have received prominent mention in many publications including, but not limited to, *The Washington Post*, *The Washington Times*, *St. Petersburg Tribune*, *San Diego Union Tribune*, *European Stars & Stripes*, *Christian Science Monitor*, *U.S. News and World Report*, *Mother Jones* and *Salon Magazine*. Our website, where much of the information received through our FOIA requests is or will be posted for all to review, can be accessed at <http://www.jamesmadisonproject.org>. Prior requests submitted by our organization have all received fee waivers.

There can be no question that the information sought would contribute to the public's understanding of government operations or activities and is in the public interest. Over the course of the Global War on Terror, numerous documents from a host of executive branch agencies have been released, detailing the legal and policy considerations that have formed the basis for discussions on a wide-range of national security policies. One example was the DOJ's disclosure of memoranda that originated in its Office of Legal Counsel and which formed a critical component of U.S. policies concerning detention of terrorist suspects. Given the highly-publicized nature of this particular controversy and its relation to safeguarding classified information, detailing the span of arguments considered will clearly contribute to the public's understanding of government operations or activities.

Please respond to this request within 20 working days as provided for by law. Failure to timely comply may result in the filing of a civil action against your agency in the United States District Court for the District of Columbia. Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact me at either (202) 498-0011 or my law office at (202) 454-2809.

Finally, please have all return correspondence addressed specifically to my attention to ensure proper delivery.

Sincerely, 

  
Mark S. Zaid  
Executive Director

**Attachments**

---

*"Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives."*

*James Madison, 1822*